

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 158

WARREN MYERS AND BILL SUMMERS, PLAINTIFFS IN
ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 27, 1923.

(20,364)

(29,264)

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a

Citation and Service.

(Filed Sept. 16, 1922.)

UNITED STATES OF AMERICA, *set*:

To United States of America, Charles C. Madison, United States District Attorney for the Western District of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States of America, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein United States of America is Defendant in Error and Bill Summers and Warren Myers are Plaintiffs in Error. That is to say said Bill Summers and Warren Myers are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. VanValkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missouri, this 16th day of September in the year of our Lord one thousand nine hundred twenty two. Arba S. VanValkenburgh, Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, set:

I hereby acknowledge due service of the within Citation this 16th day of September A. D. 1922. Charles C. Madison, Attorney for Defendant in Error.

[Endorsement omitted.]

b

Writ of Error.

(Filed Sept. 16, 1922.)

UNITED STATES OF AMERICA, *set*:

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, at the April Term, 1922, thereof, between The United States

of America and Bill Summers and Warren Myers, a manifest error hath happened, to the great damage of the said Bill Summers and Warren Myers, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, and filed in the office of the Clerk of the Supreme Court of the United States of America, on or before the 16th day of October, 1922, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States of America may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, and the seal of said District Court.

Issued at office in Kansas City, Mo., this 16th day of September, in the year of our Lord one thousand nine hundred twenty-two. Edwin R. Durham, Clerk. [Seal of the United States District Court, Western Division, Western District of Missouri.]

Allowed by Arba S. VanValkenburgh, District Judge.

UNITED STATES OF AMERICA,
Western Division of the
Western District of Missouri, ct:

In obedience to the command of the within Writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 6th day of October A. D. 1922. Edwin R. Durham, Clerk. [Seal of the United States District Court, Western Division, Western District of Missouri.]

[Endorsement omitted.]

1 UNITED STATES OF AMERICA, *ct:*

Be it remembered, that heretofore, to-wit, at the regular April Term of the United States District Court for the Western Division of the Western District of Missouri, and on the 8th day of September, 1922, the following entry appears of record, to-wit:

5131.

UNITED STATES OF AMERICA, Plaintiff,

vs.

WARREN MYERS and BILL SUMMERS, Defendants.

Order.

(Filed September 8, 1922.)

This day, upon application of the United States Attorney, it is ordered by the court that leave be granted to file amended information herein.

Thereupon comes Charles C. Madison, United States Attorney and files amended information against Warren Myers and Bill Summers.

2

[Title omitted.]

Amended Information.

Comes now Charles C. Madison, United States Attorney for the Western District of Missouri, and upon leave of court, first had and obtained, files this amended Information, and upon his official oath and upon the affidavits of Sim. P. Walker and William L. Weiss, which are hereto attached marked Exhibits A and B respectively, gives the court to understand and be informed that on the 22nd day of July, 1922, in a certain cause pending in the United States District Court for the Western Division of the Western District of Missouri, entitled "St. Louis, San Francisco Railway Company, Complainant, versus International Association of Mechinists, et al., Defendants, In equity No. 372", this Honorable Court issued an Injunction against defendants in which injunction it is lawfully ordered that the said defendants in the above entitled cause and all persons engaged in strike formerly employed by complainant and all persons assisting or aiding them or acting, combining, conspiring, agreeing or arranging with them and all other persons within the State of Missouri, be and are hereby ordered and enjoined as follows:

Not to picket the buildings or property of the complainant, or the streets, alleys, paths or roads leading to such buildings or property, except that not to exceed two representatives of all said defendants may be maintained at each regular and established entrance to complainant's buildings and property for the sole purpose of announcing the strike and peaceably persuading employees and would-be employees of complainant not to work for complainant, but such persuasion shall not be by profane, abusive, libeous or threatening epithets of threatened injury, and shall not obstruct any unwilling listener or importunately follow his steps.

Not to loiter, assemble, congregate, or trespass upon, about or

3

near the shops, roundhouse, depots, tracks, yards or other buildings or property of complainant, or elsewhere in the State of Missouri, thereby intimidating, threatening, coercing, or inducing, by the presence of numbers, complainant's employees or would-be employees so as to tend to prevent them from working for the complainant.

Not to interfere in any manner with the employees of the complainant in going to and from their daily work or in remaining at such work, except by such peaceful persuasion as announcing the so-called strike and requesting and persuading employees and would-be employees not to work for the complainant, but such persuasion shall not be by profane, abusive, libelous or threatening epithets or threatened injury and shall not obstruct any unwilling listener or importunately follow his steps.

Not to interfere in any manner with persons desiring to go into or upon the buildings or property of complainant for the purpose of working for the complainant, except by peaceful persuasion.

Not to make any threats or suggestions of danger, violence or personal injury of any kind against the employees or would-be employees of complainant, or the members of their families, and not to commit any act of force or violence or any injury against any such person or the members of his family or his property.

Not to interfere by violence or threats of violence in any manner with any person desiring to be employed by the complainant.

4 That all of the provisions of said injunction were lawful orders, and lawfully made.

That thereafter service of said injunction order was made by publication as follows:

A copy thereof was published on or about the 25th day of July, 1922, in the Kansas City Times, the Kansas City Star, and the Kansas City Journal, in Kansas City, Missouri, and in the Springfield Leader, and the Springfield Republican, in Springfield, Missouri, and The Globe-Democrat at Saint Louis, Missouri, and The Monett Times, at Monett, Missouri, and on the 26th day of July, 1922, copies of said injunction order were posted at public places in close proximity to each regular and established place of entrance to each of complainant's repair shops in the state of Missouri, and at and upon the complainant's buildings and properties in Monett, Missouri, and that on the 27th day of July, 1922, the said Warren Myers and Bill Summers, whose true first names are to affiant unknown, except as herein stated, had actual knowledge of said order of injunction and of its provisions therein contained and that on said 27th day of July, 1922, as aforesaid, the aforesaid injunctive order of this court was in full force and effect and that on the said 27th day of July, 1922, at or near the St. Louis, San Francisco roundhouse, the same being part of the shops of the said company and the property belonging to said company and included within the provisions of said injunctive order and at a point near the entrance thereof in Monett, Barry County, Missouri, and within the Western District of Missouri, and within the jurisdiction of this

court, the said Warren Myers aiding and assisting Bill Summers, and Bill Summers being at said time a striking employee and a member of one of the defendant orders enjoined, then and there being, and aiding, assisting, combining, conspiring and agreeing with the persons so enjoined, as aforesaid, did then and there unlawfully, wilfully, knowingly and contemptuously commit
5 contempt against the dignity and authority of this Honorable court and with intent then and there to interrupt and obstruct the free passage of the United States mails and interstate commerce and to then and there disobey, resist and violate the lawful orders and decree of this court as contained in said injunctive order aforesaid and wilfully obstruct its lawful processes by acts and conduct as follows, to-wit:

That the said defendants, together with other persons unknown at the said time and place aforesaid did unlawfully, knowingly, wilfully and contemptuously congregate and loiter, and did then and there interfere with, stop and detain the said Sim P. Walker and William L. Weiss, employees of the said railway company in going from their daily work and did assault, beat, bruise and maim the said Sim P. Walker and William L. Weiss, and did further curse and abuse the said Sim P. Walker and William L. Weiss and by threats and coercion, did attempt to intimidate and influence the said Sim P. Walker and William L. Weiss to leave the employment of the said St. Louis, San Francisco Railway Company and to cease to work for said company, with intent to disobey, resist and violate the lawful orders and injunctive decree of this court, contrary to the authority and dignity of the court and the laws of the United States.

Wherefore, the said Charles C. Madison, United States Attorney as aforesaid, prays the court for an attachment forthwith against the said Warren Myers and Bill Summers, and thereunder they be brought before the court to show cause, if any they have, why they or either of them should not be punished as for contempt of this court, for and on account of the matters and things as above set forth and be fined or imprisoned therefor. Chas. C. Madison, United States Attorney.

6 UNITED STATES OF AMERICA,
Western Division, Western District of Missouri, ss:

Charles C. Madison, United States Attorney, being duly sworn upon his oath says that the allegations and averments in the foregoing Information are true and correct, except as to those matters which are stated on information and belief, and as to those matters he believes them to be true. Chas. C. Madison.

Subscribed and sworn to before me this 8th day of September, 1922. Edwin R. Durham, Clerk, by A. Vinick, Deputy. (Seal.)

Kansas City, Mo., Aug. 9, 1922.

On July 27, 1922, about 7:30 P. M.

He was just leaving the Frisco yards from work, when This man Meyers stoped me and ask me if I was Mr. Walker I told him I was, he ask me if I was going to the Carmens meeting that night I told him that I thought not, about this time a care drove up and there was six men in this car and they commanded me to get in this car, the men got out and they picked me up bodley and through me in this car.

Through me between the seats and stradled me and drove me about fifteen miles in the country.

The injuries I received in this assault was fractures of the ribs, choked me till I could not swallow, after driving around for about three quarters of a hour I found that there was another man in this car that they assaulted and he told me his name was Weiss.

This man was picked out of about six men by me there was also W. Summers in this crowd who assaulted me which I have possively identified. Sim P. Walker. G. D. Crowther, Edgar Wilson, E. E. McGuire, Witnesses.

Subscribed and sworn to before me this 9th day of August, 1922.
E. A. O'Dwyer, Notary Public. (Seal.) Com. Ex. Mar. 6, 1924.
Witnesses: D. S. Land. T. F. Plumlee.

Copy Statement.

Springfield, Mo., July 28, 1922.

Mr. H. L. Worman:

I had been staying at the Broadway Hotel, Monett. Left the roundhouse yesterday about 7:00 P. M., was off of the Company property, just west of the telegraph office on Broadway, when a gang of strikers stopped me and started an argument, stating that I was "Scabbing" on them, etc. I tried to explain to them my situation down there; and they tried to get me to agree that I quit work. get on a train and go away. I refused to do this. I had explained my situation to a committee when I first went to Monett. They then told me if I worked there I would have to stay down at the roundhouse with the rest of the "scabs". I also refused to agree to this. We couldn't get anywhere. They then started up to the hotel with me and when we got past the first building they overpowered me, shoved me into a car and drove me out in the country. On the way out there they stopped an old man who was a train inspector who had gone back to work there, overpowered him and threw him in the car. I don't know how far they drove me as I was blind-folded. but I think it must have been about ten or twelve miles, at the end of which they took us out of the car. They argued with the old man a while and turned him loose, then they came to me and started tearing my clothes off and robbed me of all my money, which was about forty dollars. I started to put up a scrap and they threw me

with my face down in the back of the car and the whole gang piled on top of me and drove on. I suppose about five or six miles. They then took me out of the car, tore my clothes off and threw me and my clothes in the ditch, got in the car and went off. I got up, put on my clothes and started to walking. A man in a car came along and picked me up and took me to within a half of a mile of Aurora, I believe it was. I got on number 6 and came to Springfield.

Before this—I had been sick Monday and Tuesday. A committee of strikers went up to the Broadway Hotel and tried to get the manager to throw me out. He told them that he would see me about it first. The committee was there three or four times. I explained to him what I was doing and he told me that it was all right that I could stay there. They seemed to object to my knocking fires, which I was not doing but was running the supply room. I had been helping the hostler and running the supply room all the time I was down there. Wm. L. Weiss.

Witnesses to the reading and signing of the above: Geo. M. Reid, Deputy U. S. Marshal. L. F. McCormick, Deputy U. S. Marshal. (Seal.)

Subscribed and sworn to before me this 16 day of August, 1922.
A. L. Arnold, United States Commissioner.

9

[Title omitted.]

Trial of Cause.

[September 14, 1922.]

This day come the defendants by their counsel and file plea to the jurisdiction of the court, which is taken up and considered, and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except.

Come now the defendants, by their counsel, and file reply herein, also file demurrer to information, which is taken up and the court after hearing the arguments of counsel, and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except.

Upon application of the United States Attorney it is ordered by the court that leave be granted to amend the information herein by interlineation.

Now comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with counsel and waive formal arraignment and for plea say they are not guilty as charged in the information herein.

Thereupon both parties having answered ready for trial, and a jury having been ordered comes as follows, to-wit: O. F. Young, J. W. Alder, F. E. Deshazo, F. F. Fisher, G. L. Hall, Thomas Johnson, F. W. Mann, D. Sharp, Ben. T. Sams, Hy Weithamp, Jim Anderson and Nic F. Arens, twelve good and lawful men of the

Western Division of the Western District of Missouri, who were duly empaneled and sworn to well and truly try the issues joined.

10 Thereupon the government presents its testimony and rests, whereupon the defense presents its testimony, at its conclusion the government's testimony is heard in rebuttal and the hour of adjournment having arrived further proceedings are postponed until nine thirty o'clock tomorrow morning.

11

[Title omitted.]

Plea to Jurisdiction.

[Filed September 14, 1922.]

Now comes the above named respondent, and shows the Court that this Court is without jurisdiction to hear and determine this case in Kansas City, for the reason that the information filed herein shows that the alleged offense set forth and charged in said information is charged to have been committed in the County of Barry in the State of Missouri, which county is included in the territorial boundaries of the Southwestern (Joplin) Division of the United States Court for the Western District of Missouri; that by reason thereof the offense charged in the information filed in this case is triable at Joplin, and that this Court sitting within and for the Kansas City Division of the Western District of the State of Missouri is without jurisdiction to hear and determine the same.

This respondent therefore prays that this case may be abated as being without the jurisdiction of this Court; or, should the Court hold that this is not ground for abatement, then that this case be transferred to the city of Joplin to be tried within the territorial limits within which the offense is alleged to have been committed. Sizer & Gardner and Allyn Smith, Attorneys for Respondent.

12

[Title omitted.]

Verdict.

[Filed September 15, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, when comes the jury into open court and all answering present the trial is again proceeded with, and after hearing the argument of counsel and the instructions of the court the jury retire to consider of its verdicts.

Now comes the jury into open court with the following verdicts, to-wit:

We, the jury, find the defendant Warren Myers guilty as charged in the information herein. F. W. Mann, Foreman.

We, the jury, find the defendant Bill Summers guilty as charged in the information herein. F. W. Mann, Foreman.

Thereupon it is ordered by the court that the defendants be remanded into the custody of the United States Marshal pending further proceedings.

13

[Title omitted.]

Minute Entries.

[Filed September 16, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, and file motion for new trial herein, the same is argued and submitted to the court and the court being fully advised in the premises doth overrule the same, to which ruling of the court said defendants at the time except.

Thereupon the defendants file a motion in arrest of judgment, the same is taken up and considered by the court and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which action and ruling of the court the defendants at the time except.

And it appearing to the court that the said defendants were found guilty as charged in the information herein, by a jury on September 15th, 1922, and the United States Attorney having moved that sentence now be pronounced upon said defendants, said defendants were called upon to state reasons, if any they have, why sentence should not now be pronounced upon them, and none being stated and the court, being fully advised in the premises, fixes the punishment of the said defendants Warren Myers and Bill Summers at imprisonment in the Johnson County, Missouri, jail at Warrensburg, for a period of six months from this date and that they pay a fine of one thousand dollars each, together with the costs of this action, and that commitments issue accordingly.

It is ordered by the court that the bond for appeal for each defendant be fixed in the sum of five thousand dollars.

Now come the defendants Warren Myers and Bill Summers, 14 by their attorney, and file their petition for writ of error, together with their assignment of errors, which petition is duly sustained and a writ of error allowed to the Supreme Court of the United States.

Now comes Warren Myers and presents his bond for appeal in the sum of five thousand dollars, signed by himself as principal and by J. E. Houston as surety, which said bond is approved and ordered to act as a supersedeas herein and ordered filed and made a part of the record.

Now comes Bill Summers and presents his bond for appeal in the sum of five thousand dollars, signed by himself as principal and by J. E. Houston as surety, which bond is approved and ordered to act as a supersedeas herein and ordered filed and made a part of the record.

Whereupon citation is duly issued and signed by the court ad-

monishing the United States of America to be and appear before the Supreme Court of the United States at the City of Washington, D. C. thirty days from and after the day said citation bears date.

Now come said defendants and file said Citation, service of which has been duly acknowledged by the United States District Attorney.

And now come the said defendants, by their attorney, and file praecipe for transcript herein.

15

[Title omitted.]

Motion for New Trial.

Now comes the above named defendants, and move the Court to grant them a new trial and hearing, for that the Court erred in refusing and overruling the application and demand of these defendants to transfer this case to the Southwestern Division of this District for trial as this Court sitting within this Division is without jurisdiction to hear the charge alleged against them in the information in this case. Sizer & Gardner and Allyn Smith, Attorneys for Defendants.

16

[Title omitted.]

Motion in Arrest of Judgment.

Now comes the respondent, Warren Myers, and moves the Court to arrest the judgment herein for the following reasons, to-wit:

The Court had no jurisdiction to hear and determine this cause, for that the information filed herein shows the offense to have been committed in the Joplin (Southwestern) Division of the Western District of the State of Missouri, and this Court was without jurisdiction to try said cause at Kansas City, outside the territorial limits of said Division. Sizer & Gardner and Allyn Smith, Attorneys for Respondent.

17

[Title omitted.]

Petition for Writ of Error.

The above named, George Myers, Respondent in the above entitled case, feeling aggrieved by the judgment and sentence of the Court rendered and entered in the above entitled cause on the 16th day of August, 1922, does hereby pray a Writ of Error from said judgment to the Supreme Court of the United States of America for the reasons set forth in the assignments of error filed herein; and he prays that his Writ of Error be allowed and that citation be issued as provided by law; that a transcript of the record, proceedings and documents upon which said sentence and judgment were based, duly authenticated, be sent to the Supreme Court of the United States of America, under the rules of such Court in such cases made and provided,

And your petitioner, the appellant herein, further prays that the proper order be made relating to bail pending said Writ of Error as required by law. Sizer & Gardner and Allyn Smith, Attorneys for appellant.

Allowed Sept. 16/22. Arba S. Van Valkenburgh, Judge.

[Title omitted.]

Assignment of Errors.

Now comes the above named Bill Summers and Warren Myers and file the following assignments of error upon which they will rely in the prosecution of the appeal in the above entitled cause from the judgment and sentence of this Honorable Court on the 16th day of September, 1922.

1. The court erred in overruling the plea to the jurisdiction of this court, said plea being in effect that whereas the information filed herein shows that the alleged offense set forth and charged in the said information is charged to have been committed in the county of Barry, and state of Missouri, which county is within the boundaries of the Southwestern (Joplin) Division of the United States District Court for the Western District of Missouri, and that by reason thereof, the offense charged in this information is triable in Joplin, and this court, sitting in and for the Kansas City division of the Western District of the State of Missouri, is without jurisdiction to hear and determine the same, to the overruling of which plea to the jurisdiction, the defendants and each of them duly excepted and caused their exceptions to be noted of record.

2. The said United States District Court for the Western District of Missouri sitting at Kansas City erred in overruling a motion for a new trial filed by these appellants and respondents from the judgment in this case pronounced, said motion for a new trial being on the ground that this Honorable Court erred in refusing and overruling the application, and demand of these defendants to transfer this case to the Southwestern Division of this District for trial, as this court sitting within this division is without jurisdiction to hear the charge alleged against them in the information in this case.

3. That the United States District Court for the Western District of Missouri, sitting at Kansas City, erred in overruling by motion in arrest of judgment filed in this court, said motion in arrest of judgment being to the effect that this Honorable Court had no jurisdiction to hear and determine this cause or that the information filed herein shows the offense to have been committed in the county of Barry and state of Missouri, which said county is not within the Western Division of the Western District of Missouri, and that this court is without jurisdiction to try said cause at Kansas City, outside the territory and limits of said division.

Wherefore, these respondents and each and both of them pray that the sentence and judgment be reversed and that the said United

States District Court within and for the Western Division of the Western District, sitting at Kansas City, be ordered to enter judgment reversing the decision of the said United States District Court for the Western District of Missouri, sitting at Kansas City, in said cause. Sizer & Gardner and Allyn Smith, Attorneys for Plaintiff in Error, the respondents.

Bond on Writ of Error.

Know all men by these presents:

That we, Warren Myers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars (\$5,000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Warren Myers, and the said Warren Myers has obtained a Writ of Error from the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

21 Now, the condition of the above obligation is such that if the said Warren Myers shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence

against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

22

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars (\$5,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Bill Summers, and the said Bill Summers has obtained a Writ of Error from the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

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Now, the condition of the above obligation is such that if the said Bill Summers shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of

Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Bill Summers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

[Title omitted.]

Præcipe for Transcript.

The Clerk in preparing transcript for transmission to the Supreme Court of the United States will include in said transcript the following papers:

- Information.
- Plea to the Jurisdiction.
- Motion for new trial.
- Motion in arrest of judgment.
- The Journal entries relative to the ruling and exceptions on each of these motions and plea.
- The Journal entry of judgment.
- Petition for Writ of Error.
- Writ of Error and Citation.
- Assignments of Error.
- Bond in appeal.
- Sizer & Gardner and Allyn Smith, Attorneys for Plaintiff in Error.

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Warren Myers as principal, and J. E. Houston as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Scaled with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Warren Myers, and the said Warren Myers has obtained a Writ of Error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Supreme Court thirty

days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Warren Myers shall appear either in person or by attorney in the United States Supreme Court on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Supreme Court in said cause, and shall pay any fine and costs imposed by the judgment of the District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Western Division of the Western District of Missouri on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Supreme Court; then the above obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Oct. 11/22. Arba S. Van Valkenburgh, Judge.

24c

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and twenty-two.

Whereas, lately, September 16, 1922, before the Honorable District Court, sitting within and for the Western District of Missouri at Kansas City, in a suit pending between the United States of America, plaintiff, and Bill Summers and Warren Myers, defendants, a judgment and sentence was rendered against the said Bill Summers, and the said Bill Summers has obtained a Writ of Error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Supreme Court thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said Bill Summers shall appear either in person or by attorney in the

United States Supreme Court on such day or days as may be
24d appointed for the hearing of said cause in said court and
prosecute his said writ of error, and shall abide by and obey
all orders made by the United States Supreme Court in said cause,
and shall pay any fine and costs imposed by the judgment of the
District Court against him, and shall surrender himself in execution
of the judgment and sentence appealed from as said court may direct,
if the judgment and sentence against him shall be affirmed or the
writ of error or appeal is dismissed; and if he shall appear for trial
in the District Court of the United States for the Western Division
of the Western District of Missouri on such day or days as may be
appointed for a retrial by said District Court and abide by and obey
all orders made by said court provided the judgment and sentence
against him shall be reversed by the United States Supreme Court;
then the above obligation to be void, otherwise to remain in full
force, virtue and effect. J. E. Houston. W. H. Summers.

Approved Oct. 11/22. Arba S. Van Valkenburgh, Judge.

25 UNITED STATES OF AMERICA, *set*:

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a true, full and complete copy of the record, assignment of errors and all proceedings in the cause wherein The United States of America is plaintiff and Warren Myers and Bill Summers are defendants, as fully as the same appears on file and of record in my office, in accordance with præcipe filed herein and made a part hereof.

I further certify that the original Citation and Writ of Error are prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 6th day of October, A. D. 1922. Edwin R. Durham, Clerk U. S. District Court. [Seal of the United States District Court, Western Division, Western District, of Missouri.]

Endorsed on cover: File No. 29,264. W. Missouri D. C. U. S. Term No. 714. Warren Myers and Bill Summers, plaintiffs in error, vs. The United States of America. Filed November 27th, 1922. File No. 29,264.

NO. 158

1950

1950

Supreme Court of the United States

BILL SUMMERS AND WARREN MYERS
PLAINTIFFS IN ERROR

VS.

UNITED STATES OF AMERICA
DEFENDANTS IN ERROR

1950

No. 29264.

IN THE
Supreme Court of the United States.

**BILL SUMMERS AND WARREN MYERS,
PLAINTIFFS IN ERROR,**

VS.

**UNITED STATES OF AMERICA,
DEFENDANTS IN ERROR.**

STATEMENT OF FACTS.

The facts in this case are as follows: On the 22 day of June, 1922, the Honorable the District Court of the United States for the Western District of Missouri, sitting at Kansas City, at the suit of the St. Louis and San Francisco Railway Company granting an injunction against striking shopmen, among whom were these plaintiffs in error (defendants below) but these plaintiffs in error were not named in the bill of complaint and injunction, they being made a party thereto as belonging to a class. On the 8th day of September, 1922, an information was filed before the Judge of the Western District of Missouri at Kansas City, by the U. S. District Attorney charging that these defendants and each and both of them had violated said injunction by doing

certain acts prohibited therein. A warrant of arrest was issued and the defendants were arrested at Monett, Missouri, and carried to Kansas City a distance of two hundred miles. The information filed by the United States District Attorney in said court charging that these defendants had unlawfully assaulted an employee of the Frisco Railroad Company at Monett, in Barry County, Missouri, on the 27th day of July, 1922, contrary to and in violation of the terms of said injunction.

A map of Missouri showing limits of the different divisions will show that Barry County and Monett are within the Southwestern Division of said District Court which sits at Joplin and their trial was had over their objection at Kansas City in another and different (the Western) Division of the said District Court for the West District of Missouri (R. S. Sec. 540, J. C. Sec. 91. Acts of March 3, 1911 Sec. 91. 36 Stat. 1117, and Dec. 22, 1911 Ch. VIII. 37 Stat. 51, and being in Barne's Code as Sec. 854 Missouri).

The defendants seasonably raised the question of jurisdiction and at all times insisted that they should have had trial in the division in which it was charged they committed the offense, and the only question raised by the record in this case is, whether their motion to abate or transfer the case to Joplin within the proper division for trial should have been sustained.

The defendants raised the question by plea to the jurisdiction which was overruled and excepted to (Printed Record 8). By a motion for a new trial (Rec. 10) and by motion in arrest of judgment (Rec. 10) all of which were denied by the court and proper exceptions saved.

ABSTRACT OF THE RECORD.

The following is an abstract of the record so far as is necessary to present the question of jurisdiction.

Amended Information.

Comes now Charles C. Madison, United States Attorney for the Western District of Missouri, and upon leave of court, first had and obtained, files this amended information, and upon his official oath and upon the affidavits of Sim. P. Walker and William L. Weiss, which are hereto attached marked Exhibits A and B respectively (Rec. 3). (Allegations of the information as to the issuance of the injunction and service thereof, are omitted as unnecessary) on the 27th day of July, 1922 the said Warren Myers and Bill Summers, whose true first names are to affiant unknown, except as herein stated, had actual knowledge of said order of injunction and of its provisions therein contained and that on said 27th day of July, 1922, as aforesaid, the aforesaid injunctive order of this court was full force and effect and that on said 27th day of July, 1922, at or near the St. Louis, San Francisco roundhouse, the same being part of the shops of the said company and the property belonging to said company and included within the provisions of said injunctive order and at a point near the entrance thereof in Monett, Barry County, Missouri, and within the Western District of Missouri, and within the jurisdiction of this (Rec. 4) court, the said Warren Myers aid-

ing and assisting Bill Summers, and Bill Summers being at said time a striking employee and a member of one of the defendant orders enjoined, then and there (Rec. 5) being (matters not material to the question of jurisdiction omitted), and conduct as follows, to-wit:

That the said defendants, together with other persons unknown at the said time and place aforesaid did unlawfully, knowingly, wilfully and contemptuously congregate and loiter, and did then and there interfere with, stop and detain the said Sim P. Walker and William L. Weiss, employees of the said railway company in going from their daily work and did assault, beat, bruise and maim the said Sim P. Walker and William L. Weiss, and did further curse and abuse the said Sim P. Walker and William L. Weiss and by threats and coercion, did attempt to intimidate and influence the said Sim P. Walker and William L. Weiss to leave the employment of the said St. Louis, San Francisco Railway Company and to cease to work for said company, with intent to disobey, resist and violate the lawful orders and injunctive decree of this court, contrary to the authority and dignity of the court and the laws of the United States.

Wherefore, the said Charles C. Madison, United States Attorney as aforesaid, prays the court for an attachment forthwith against the said Warren Myers and Bill Summers, and thereunder they be brought before the court to show cause, if any they have, why they or either of them should not be punished as for contempt of this court, for and on account of the matters and things as

above set forth and be fined or imprisoned therefor.
Chas. C. Madison, United States Attorney (Rec. 5).

(Verification omitted.)

Plea to Jurisdiction.

[Filed September 14, 1922.]

Now comes the above named respondent, and shows the court that this court is without jurisdiction to hear and determine this case in Kansas City, for the reason that the information filed herein shows that the alleged offense set forth and charged in said information is charged to have been committed in the County of Barry in the State of Missouri, which county is included in the territorial boundaries of the Southwestern (Joplin) Division of the United States Court for the Western District of Missouri; that by reason thereof the offense charged in the information filed in this case is triable at Joplin, and that this court sitting within and for the Kansas City Division of the Western District of the State of Missouri is without jurisdiction to hear and determine the same.

This respondent therefore prays that this case may be abated as being without the jurisdiction of this court; or, should the court hold that this is not ground for abatement, then that this case be transferred to the City of Joplin to be tried within the territorial limits within which the offense is alleged to have been committed. Sizer & Gardner and Allyn Smith, Attorneys for Respondent (Rec. 8).

Trial of Cause.

[September 14, 1922.]

This day come the defendants by their counsel and file plea to the jurisdiction of the court, which is taken up and considered, and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which ruling of the court the defendants, by their attorney, at the time except (Rec. 7).

[Title omitted.]

Verdict.

[Filed September 15, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, when comes the jury into open court and all answering present the trial is again proceeded with, and after hearing the argument of counsel and the instructions of the court the jury retire to consider of its verdicts.

Now comes the jury into open court with the following verdicts, to-wit:

We, the jury, find the defendant, Warren Myers, guilty as charged in the information herein. F. W. Mann, Foreman.

We, the jury, find the defendant, Bill Summers, guilty as charged in the information here. F. W. Mann, Foreman (Rec. 7).

[Title omitted.]

Motion for New Trial.

Now comes the above named defendants, and move the court to grant them a new trial and hearing, for that the court erred in refusing and overruling the application and demand of these defendants to transfer this case to the Southwestern Division of this District for trial as this court sitting within this Division is without jurisdiction to hear the charge alleged against them in the information in this case. Sizer & Gardner and Allyn Smith, Attorneys for Defendants (Rec. 10).

[Title omitted.]

[Filed September 16, 1922.]

This day comes Charles C. Madison, United States Attorney, also come the defendants in their own proper persons and with their counsel, and file motion for new trial herein, the same is argued and submitted to the court and the court being fully advised in the premises doth overrule the same, to which ruling of the court said defendants at the time except (Rec. 9).

Motion in Arrest of Judgment.

Now comes the respondent, Warren Myers, (and Bill Summers) and moves the court to arrest the judgment herein for the following reasons, to-wit:

The court had no jurisdiction to hear and determine this cause, for that the information filed herein shows the offense to have been committed in the Joplin (Southwestern) Division of the Western District of the State of Missouri, and this court was without jurisdiction to try said cause at Kansas City, outside the territorial lim-

its of said Division. Sizer & Gardner and Allyn Smith, Attorneys for Respondents (Rec. 10).

Thereupon the defendants file a motion in arrest of judgment, the same is taken up and considered by the court and the court after hearing the arguments of counsel and being fully advised in the premises doth overrule the same, to which action and ruling of the court the defendants at the time except.

And it appearing to the court that the said defendants were found guilty as charged in the information herein, by a jury on September 15th, 1922, and the United States Attorney having moved that sentence now be pronounced upon said defendants, said defendants were called upon to state reasons, if any they have, why sentence should not now be pronounced upon them, and none being stated and the court, being fully advised in the premises, fixes the punishment of the said defendants, Warren Myers and Bill Summers at imprisonment in the Johnson County, Missouri, jail at Warrensburg, for a period of six months from this date and that they pay a fine of one thousand dollars each, together with the costs of this action, and that commitments issue accordingly.

It is ordered by the court that the bond for appeal for each defendant be affixed in the sum of five thousand dollars (Rec. 9).

Petition for Writ of Error.

The above named, George Myers, respondent and (Bill Summers) in the above entitled case, feeling ag-

grieved by the judgment and sentence of the court rendered and entered in the above entitled cause on the 16th day of August, 1922, does hereby pray a writ of error from said judgment to the Supreme Court of the United States of America for the reasons set forth in the assignments of error filed herein; and he prays that his writ of error be allowed and that citation be issued as provided by law; that a transcript of the record, proceedings and documents upon which said sentence and judgment were based, duly authenticated, be sent to the Supreme Court of the United States of America, under the rules of such court in such cases made and provided (Rec. 10).

And your petitioners, the appellants herein, further prays that the proper order be made relating to bail pending said writ of error as required by law. Sizer & Gardner and Allyn Smith, Attorneys for appellant.

Allowed Sept. 16/22. Arba S. Van Valkenburgh, Judge (Rec. 11).

Assignment of Errors.

Now comes the above named Bill Summers and Warren Myers and file the following assignments of error upon which they will rely in the prosecution of the appeal in the above entitled cause from the judgment and sentence of this Honorable Court on the 16th day of September, 1922.

1. The court erred in overruling the plea to the jurisdiction of this court, said plea being in effect that whereas the information filed herein shows that the alleged offense set forth and charged in the said informa-

tion is charged to have been committed in the County of Barry, and State of Missouri, which county is within the boundaries of the Southwestern (Joplin) Division of the United States District Court for the Western District of Missouri, and that by reason thereof, the offense charged in this information is triable in Joplin, and this court, sitting in and for the Kansas City division of the Western District of the State of Missouri, is without jurisdiction to hear and determine the same, to the overruling of which plea the jurisdiction, the defendants and each of them duly excepted and caused their exceptions to be noted of record.

2. The said United States District Court for the Western District of Missouri sitting at Kansas City erred in overruling a motion for a new trial filed by these appellants and respondents from the judgment in this case pronounced, said motion for a new trial being on the ground that this Honorable Court erred in refusing and overruling the application, and demand of these defendants to transfer this case to the Southwestern Division of this District for trial, as this court sitting within this division is without jurisdiction to hear the charge alleged against them in the information in this case.

3. That the United States District Court for the Western District of Missouri, sitting at Kansas City, erred in overruling by motion in arrest of judgment filed in this court, said motion in arrest of judgment being to the effect that this Honorable Court had no jurisdiction to hear and determine this cause or that the information filed herein shows the offense to have been committed in the County of Barry and State of Missouri, which said

county is not within the Western Division of the Western District of Missouri, and that this court is without jurisdiction to try said cause at Kansas City, outside the territory and limits of said division.

Wherefore, these respondents and each and both of them pray that the sentence and judgment be reversed and that the said United (Rec. 11) against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the obligation to be void, otherwise to remain in full force, virtue and effect. Warren Myers. J. E. Houston.

Approved Sept. 16/22. Arba S. Van Valkenburgh, Judge.

[Title omitted.]

Bond on Writ of Error.

Know all men by these presents:

That we, Bill Summers as principal, and J. E. Houston, as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars (\$5,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty-two (Rec. 12).

(Condition of bond omitted.)

(Signed) Bill Summers,
J. E. Houston.

Approved September 16/22. Arba S. Van Valkenburgh, Judge.

(The bond of Warren Myers was the same and is found on printed Record, page 13.)

ARGUMENT AND BRIEF OF PLAINTIFFS IN ERROR.

The injunction for the violation of which the plaintiffs in error (defendants below) was prosecuted and convicted was granted under the Clayton Act (Act of October 15, 1914, c. 323, Sec. 20, 38 Stat. 738, Sec. 1035, Barnes' Code).

And the prosecution was under the same Act (Sec. 22, 38 Stat. 738, Sec. 1039, Barnes' Code) and is purely a statutory contempt, and is in no manner governed by the practice of the High Court of Chancery of England.

We conceive that there is a vast difference in the matter of this statutory contempt, under the Act of Congress, and the "inherent Power" Doctrine of Contempt, as derived from the English Chancery Practice. Under which courts of law punished contempts committed *facie curie* at once, and in the Chancery Court contempt *facie curie* and those contempts arising from the failure to obey an affirmative mandatory order of the court (which was purely remedial in its nature) were punished without the intervention of a jury. All other contempts were usually punished by indictment, and the right of trial by jury was allowed, not *facie curie* nor remedial in their nature.

Mr. Justice Holmes, speaking for this court says, in discussing contempts:

"These contempts are infractions of the law, visited with punishment as such, * * * so truly are they crimes that it seems to be proved that in the early law they were 'punishable only by the usual Criminal procedure.' 3 Transactions of the Royal Historical Society, N. S. p. 147 (1885), and that at least in England, it seems that they may still be and preferable are tried in that way. See 7 Laws of England (Halsbury), 280 Subdiv. Contempt of Court (604)" *Gompers v. United States*, 233 U. S. 604.

Under the Clayton Act, the trial and proceedings, while being as for contempt, is a criminal proceeding, "and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information."

(Clayton Act. Sec. 22, 38 Stat. 738, Sec. 1029 Barne's Code.)

And at the trial the privilege of a trial by jury is a matter of election on the part of the defendant (last section, *supra*).

The following statutes we submit control the venue:

The Act of March 3, 1911, page 231 (Section 51; 36 Statute, 1101, provides except as provided by the five succeeding sections no person shall be arrested in one district for trial in another, in any civil action before the District Court (Barnes Code, 813). Act of March 3, 1911, page 231, Section 52, provides that when a state conducts more than one district a suit in the District Court thereof against a single defendant an inhabitant of such state must be brought in the district in which he resides. (Barnes Code, 814). Act of March 3, 1911, page 231, Section 53, provides—when a district contains

more than one division suit must be brought in the division where defendant resides. * * * and it also provides "*All prosecution for criminal offenses shall be within the division of such district where same is committed* (the italics are ours), unless the court, or the judge thereof, upon application of defendants, shall order the cause to be transferred for prosecution to another division of the district" (Sec. 815, Barne's Code).

And this court held in the Gompers case, even before the passage of the Clayton Act, that a prosecution as for contempt, for the violation of an injunction, was "a criminal offense."

Gompers v. United States, 233 U. S. 604.

It is the contention of the plaintiffs in error that under the provisions for trial under the Clayton Act, that their trial at Kansas City was illegal and without jurisdiction. These defendants in common with numerous others who were arrested for violation of that injunction were arrested at their homes, either without a warrant or without any proper showing that would cause a warrant to issue (they should all have been commenced by citation), carried to distant places in the district where it was difficult for them, among strangers, to make bond and forced to trial, as were these plaintiffs in error, defendants below, at a place distant from their homes where it was difficult to procure witnesses and their trial was under the most disadvantageous circumstances to them. Among the complaints made by the colonists against King George III in their Declaration of Independence was that

their citizens were arrested and transported across the seas to distant countries for trial in strange lands. Magna Charta says "* * * Every freeman shall have a trial only by the legal judgment of his peers * * *" and we have in this case, as we deem it, one of the most flagrant violations of the spirit of the Declaration of Independence. As was said by one of the sages of this Bench in speaking for this court, that "The Declaration of Independence is the soul and spirit, while the Constitution is merely the body of our laws"; and in order to clearly interpret the Constitution and laws of the United States it is necessary to do so in the spirit of the Declaration of Independence. We might well leave this question without further argument, were it not for the fact that the contention of the prosecution, that in the Clayton Act, being the Act of October 15, 1914, page 323, Section 22, 38 Stat. 738, and being Section 1390 Barnes Code, it is provided: "If in the judgment of the court the alleged contempt be not sufficiently purged a trial shall be directed at a time and place fixed by the court." The contention of the prosecution was, and the Honorable District Court held that that clause gave the judge the power to direct the trial to be held at any place within the district, and not necessarily within the division of the district in which the offense was committed. and this holding was (presumably) based on the holding of the Court of Appeals of the Eighth Circuit, in the Brinkley case: That a defendant might be arrested in one district and tried for contempt in another district, for the

contempt of the District Court of such other district, into which he was carried.

While not admitting the correctness of the decision of the court in the Brinkley case, in fact we are of opinion that it was without warrant of law, and the doctrine therein announced not sound, that case is readily distinguishable in principle from the instant case.

In the Brinkley case, The M. & N. A. R. R. was in the hands of, and was being operated by a receiver appointed by the Honorable District Court for the Eastern District of Arkansas. And Brinkley was arrested for an unwarranted and contemptuous interference with the operation of the road by the receiver, the acts which were alleged to constitute the contempt, being committed in the Western District of Arkansas. And upon his arrest Brinkley was carried to Little Rock in the Eastern District, and there tried and convicted for the alleged contempt. *Brinkley v. United States*, 282 Fed. R. 244.

The Brinkley case was for contempt for interference with a receiver, and was within the practice of the High Court of Chancery. The instant case was a prosecution under the Clayton Act and is purely a statutory proceeding.

In the instant case the district in which the offense was committed was composed of three divisions, and the information alleged that the offense was committed in Barry County, at Monett (printed Record, 4, second line from the bottom of the page). Barry County is

in the Southwestern Division, and Kansas City where the trial was had is in the Western Division.

(Act March 3, 1911, c. 231, Barnes Code, 854.)

In the Brinkley case, a trial in the Western District of Arkansas would have been before a different judge, and in the instant case the judge of all the divisions is the same.

The Brinkley case was for an interference with the officer, and one of the instruments of the court, and constituted a contempt for an interference with what is usually denominated, "the due and orderly course of justice." The instant case is for a statutory contempt under the Cayton Act. The two cases are not analogous.

The contention of plaintiffs in error, defendants below, was that that clause (last above cited) merely gave the court the power for the convenience of parties to fix the time and place of trial, but that such place must be within the division in which the alleged contempt took place, and it is upon the decision of this question in the light of the statutes which we have cited that the judgment in this case depends, taking into consideration the complaints made at the time of the Declaration of Independence. The letter of the Declaration of Independence is as follows: * * * "He has combined with others to subject us to jurisdiction foreign to our constitution, and unacquainted by our laws; * * * and would deprive us in many ways of trial by jury."

"* * * transporting us beyond the seas to be tried for offenses."

This followed by the sixth amendment to the Constitution of the United States—and it may not be out of place to state that the first eleven amendments are in the nature of declarations of Bill of Rights, Article six, says: In all criminal prosecutions the accused shall be tried by a public and speedy trial by an impartial jury of the state and district where the crime shall have been committed, which district shall previously have been ascertained by law." And this is followed by the Act of Congress, for the purpose of hedging about and fully protecting the rights of the citizen. It was a right that was granted all Englishmen that he be tried by a jury of his peers, drawn from the Vicounage and we have Sections 51, 52 and 53 of the Judicial Code. Section 51 provides that in a civil case (if this be a civil case), a person shall not be arrested in one district for trial in another for any civil action. Section 52 provides that the trial shall be had within the district where a suit is commenced and Sec. 53 provides that where the district contains more than one division that all *crime and offences* which shall be tried within the division where the same is committed.

We insist that the letter and spirit of the Clayton Act gives the court no right to fix the time and place of trial outside the division in which the acts charged were committed, but must be read in conjunction with other statutes of the Law of the Land and that the judge's

power in fixing time and place of trial should be and is limited to the territorial division of the district. We submit the trial was without jurisdiction and must be reversed.

Respectfully submitted,

ALLYN SMITH,
Solicitor for Plaintiff in Error.